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4 UNITED STATES COURT FOR THE
EASTERN DISTRICT OF NEW YORK
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6 LUCIO CELLI,
7 Appellant/Petitioner/Defendant.
8
9 vs.
10 United States of America,
11 Appellee/Respondent/Plaintiff

Case No.: 19-cr-00127
ECF SERVICE OF "MOTION FOR TO MODIFY
PROBATION TERMS FOR PROCESS SERVICE OF
JUDGES AND PROSECUTORS" UPON JUDGE
ENGELMAYER VIA ECF, AS EXPLAINED BY MR.
SILVERMAN AND AS REQUIRED BY THE 2D. CIR.

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13 Dear Judge Engelmayer,

14 I seek a mandamus for Judge Engelmayer inaction and his denial
of my right to the court

15 I need to sue judges and prosecutors, for no money, for them to
provide me with a fair trial

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17 I am requesting to have my First Amendment right of "access to the court" fully restored.
The right to petition the government is a constitutional right under the First Amendment. *See*
McDonald v. Smith, 472 U.S. 479.

18 Mr. Silverman lied to Judge Engelmayer about sending paper to the AUSA and I have him
audio recorded telling first, I have to them because that is what I agreed to with AUSA Ms.
Karamigous and second, he told Judge Engelmayer that he does not have to send it

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20 Either way, I must sue Mr. Silverman and Judge Engelmayer has known this since April 6,
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24 MOTION FOR TO MODIFY PROBATION TERMS FOR PROCESS SERVICE OF JUDGES AND
PROSECUTORS - 1

DISCUSSION

We “may issue all writs necessary or appropriate in aid of [our] jurisdiction[] and agreeable to the usages and principles of law” under the All Writs Act, 28 U.S.C. § 1651(a). Three conditions must be met before a writ may issue: (1) the petitioner “[must] have no other adequate means to attain . . . relief;” (2) the petitioner must show that the right to mandamus is “clear and indisputable,” and (3) the court “must be satisfied that the writ is appropriate under the circumstances.” *Cheney v. U.S. Dist. Ct. for D.C.*, 542 U.S. 367, 380–81 (2004) (first alteration in original) (internal quotation marks and citations omitted).

A. Mandamus standard

Under the All Writs Act, 28 U.S.C. § 1651(a), the Circuit court may issue a writ of mandamus in “exceptional circumstances” to correct a “judicial usurpation of power.” *Will v. United States*, 389 U.S. 90, 95 (1967) (quoting *DeBeers Consol. Mines, Ltd. v. United States*, 325 U.S. 212, 217 (1945)). The remedy “is a drastic one,” *Kerr v. United States Dist. Court*, 426 U.S. 394, 402 (1976), employed only where a party has a “**clear and indisputable**” right to relief, that party has “no other adequate means to attain” that relief, and issuance of the writ is appropriate under the circumstances, *id.* at 403 (citation omitted); see also *In re Roman Catholic Diocese of Albany, New York, Inc.*, 745 F.3d 30, 35 (2d Cir. 2014) (per curiam) (same).

1. Mandamus for denial of motion to transfer venue and denial of motion for recusal

Both transfer of venue under Rule 21(a) of the Federal Rules of Criminal Procedure and judicial recusal under 28 U.S.C. 455(a) may be proper bases for mandamus review. *See e.g., United States v. Garber*, 413 F.2d 284, 285 (2d Cir 1069) (denial of transfer of venue "may be reviewable by way of writ of mandamus" upon "a strong showing of prejudice", *id.* (citing *Application of Gottesman*, 332 F.2d 975, 976 (2d Cir. 1964)). and a "clear abuse" of discretion which would warrant interference with the trial judge's determination", *id.* (citing *Bankers Life & Casualty Co. v. Holland*, 346 U.S. 379, 383 (1953)); *In re IBM Corp.*, 45 F.3d 641, 643 (2d Cir. 1995) (citation omitted) (A party is entitled to a writ of mandamus if he is able to show a "clear and indisputable" right to recusal of the assigned district judge under 28 U.S.C. § 455(a)).

B. Procedural history

1 On November 23, 2020, Mr. Celli, through counsel, submitted a pretrial motions
2 arguing, under Fed. R.Crim. P. 21 and 28 U.S.C. § 455(a), for transfer of the case to a
3 court outside the Second Circuit. Dkt. 101. The government responded December 7,
4 2020. Dkt. 106. Oral argument was held December 15, 2020 before the Honorable Paul
a bench opinion.

5 **C. Facts presented to district court**

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7 I was deprived of a fair trial and Judge Engelmayer went out of his way to
8 intimidate me for Randi Weingarten and deprived me of own intent, which was,
9 in part, Randi Weingarten and the UFT wanted to expose my rape and Judge
Cogan committed a crime for the UFT.¹

10 **Please Take Notice**, there are other documents under seal for more information

11 Judge Engelmayer took a bribe from Randi Weingarten to kept out the fact that she
12 placed my HIV on Betsy Combier's website

13 Judge Engelmayer knew of my intent was, in part, Randi Weingarten and the UFT
14 wanted to expose my rape and Judge Cogan committed a crime for the UFT—please see
15 the underseal for the others

16 **Please Take FURTHER Notice**, Judge Engelmayer used the information from emails
17 sent to him and the coaching from Randi Weingarten to intimate me and deprive me of
free will

18 Moreover, similar conduct occurred with Judge Donnelly, but not on the scale of Judge
19 Engelmayer, and I have AUSAs telling me that she (the judge) with the AUSA and my
20 lawyer were committing a crime against me.

21 **Please Take EVEN further Notice**, I sent an audio recording, out of many, of Judge
22 Engelmayer bullying me for Randi Weingarten and Sen. Schumer.

23 **D. Legal standard presented to district court**

- 24 1. The pretrial motion was premised 28 U.S.C. Section 455(a) requires recusal when
25 impartiality might reasonably be questioned: "Any justice, judge, or magistrate judge

27 ¹ See attachment of Judge Cogan's misconduct and I have AUSA, outside of the 2d. Cir., who said that Judge Cogan
28 committed a crime for the UFT

1 of the United States shall disqualify himself in any proceeding in which his
2 impartiality might reasonably be questioned." 28 U.S.C. § 455(a). The Second Circuit
3 analyzes § 455 by asking:

4 Would a reasonable person, knowing all the facts, conclude that the
5 trial judge's impartiality could reasonably be questioned? Or phrased
6 differently, would an objective, disinterested observer fully informed
7 of the underlying facts, entertain significant doubt that justice would
8 be done absent recusal?

9 *United States v. Bayless*, 201 F.3d 116, 126 (2d Cir. 2000). The standard is "designed to
10 promote public confidence in the impartiality of the judicial process." *Id.* The Eastern
11 District has long recognized that recusal is appropriate if "the indictment...alleges that the
12 victims of the alleged crime are a judge of this Court[.]" Administrative Order 2012-11,
13 docketed by then-Chief Judge Amon in *United States v. Romano*, No. 12 Cir. 691 (JFK)
14 (E.D.N.Y. Nov. 8, 2012), Dkt. 12 (transferring case under Rule 21 to a judge outside of
15 the Eastern District where the Indictment alleged a plot to kill a judge and Assistant
16 United States Attorney in the Eastern District of New York); *cf. United States v. Wright*,
17 603 F. Supp.2d 506, 509 (2009) (transferring prosecution under Rule 21 to Southern
18 District of New York without government objection where defendant was charged with
19 assaulting an Assistant United States Attorney in an Eastern District of New York
courtroom) (citing New York County Civil Court procedure "mandat[ing] that any case
involving one of its employees as a party must be automatically transferred to a county
other than the one in which the employee works or resides.").

20 **2. 28 U.S.C. § 2106**

21 If the court cannot force Judge Engelmayer to issue an order
22 under a writ, I know that the Court of Appeals can force Judge
23 Engelmayer to write one under 28 USC §2106

24 I may write to the court of appeals, or the Judicial Conference
25 or the Supreme Court to get a difference assigned judge under 28
USC § 2106 due to the impartiality Judge Engelmayer. Both said
judges forgot, intentionally, to explain their connections to
Randi Weingarten, Sen. Schumer, and the UFT.

26 **Please Take Notice**, Federal appellate courts' ability to assign
27 a case to a different judge and it rests not on the recusal
28 statutes alone, but on the appellate courts' statutory power to
`require such further proceedings to be had as may be just under
the circumstances,' 28 U.S.C. § 2106." *Liteky v. United States*,
____ U.S. ___, ___, 114 S. Ct. 1147, 1156-57 (1994). Thus we are
empowered to "direct the entry of such appropriate . . . order.
. . as may be just under the circumstances," 28 U.S.C. § 2106
(1994), including reassignment of the case where, in the
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language of 28 U.S.C. § 455(a) (1994), the district judge's "impartiality might reasonably be questioned." See *Dyas v. Lockhart*, 705 F.2d 993, 997-98 (8th Cir.) (remanding to another district judge to assure the appearance of impartiality, notwithstanding that appeal was from court's failure to recuse sua sponte and the issue was never raised in the district court), cert. denied, 464 U.S. 982 (1983). See also *Ligon v. City of New York*, 736 F.3d 118 (2d Cir. 2013)

In the original litigation, I did not argue "Full Faith and Credit Clause" and now I get too with the argument under *Lijeborg v. Health Svcs. Acq. Corp.*, 486 US 847 (1988) because of the impartiality I experienced at the hands of Judge Engelmayer intimidating me for Randi Weingarten and lied about his association with Sen. Schumer.

A. Federal appellate courts have the authority to reassign cases to different district judges as part of their general supervisory powers. *Cobell v. Kempthorne*, 455 F.3d 317, 331 (D.C. Cir. 2005) (quoting *United States v. Microsoft Corp.*, 56 F.3d 1448, 1463 (D.C. Cir. 1995)). Statutory authority for reassignment rests in 28 U.S.C. § 2106 (2005), which states: "The Supreme Court or any other court of appellate jurisdiction may . . . remand the cause and direct the entry of such appropriate judgment, decree, or order, or require such further proceedings to be had as may be just under the circumstances." See Arthur D. Hellman, *The Regulation of Judicial Ethics In the Federal System: A Peek Behind Closed Doors*, 69 U. Pitt. L. Rev. 189, 204 (2007) (stating that section 2106 provides statutory authority for appellate courts' reassignment of cases to different district judges upon remand).

Judge Engelmayer's decisions were not just because the judge, as one example, allowed Mr. Silverman to lie about my intent, which Judge Engelmayer knew was a lie because he received my emails.

B. Judicial reassignment may be appropriate where personal bias or unusual circumstances are established. *TriMed, Inc. v. Stryker Corp.*, 608 F.3d 1333, 1344 (9th Cir. 2010) (citing *Smith v. Mulvaney*, 827 F.2d 558, 562 (9th Cir. 1987)). In determining whether unusual circumstances exist, a court considers (1) "whether the original judge would reasonably be expected upon remand to have substantial difficulty" disregarding previously-expressed findings or views

1 "determined to be erroneous or based on evidence that must be
2 rejected"; (2) "whether reassignment is advisable to preserve
3 the appearance of justice"; and (3) whether any duplication or
4 waste attributable to reassignment would outweigh "any gain in
5 preserving the appearance of fairness." *Id.* (quoting *Smith v.*
6 *Mulvaney*, 827 F.2d 558, 563 (9th Cir. 1987)).

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10 C. Reassignment may further be required if "reasonable observers
11 could believe that a judicial decision flowed from the judge's
12 animus toward a party rather than from the judge's application
13 of law to fact." *Cobell*, 455 F.3d at 332. Appellate courts
14 tend to exercise their reassignment authority sparingly. *Id.*
15 (reserving such authority for "extraordinary cases").

16 It is obvious to AUSA Gold, AUSA Shaw, and 80 other DOJ
17 personnel that Judge Cogan used his position for the UFT, and he
18 knew and understand the UFT contract, which is the reason I am
19 claiming Full Faith

20 In addition, borderline IQ kids knew and understood and same the
21 same reasoning as Justice Roberts

22 D. Revised section will also permit a remand by the Supreme Court
23 to a court of appeals inasmuch as such latter court then would
24 be a lower court. The revised section is in conformity with
25 numerous holdings of the Supreme Court to the effect that such
26 a remand may be made. See especially, *Maryland Casualty Co. v.*
27 *United States*, 1929, 49 S. Ct. 484, 279 U.S. 792, 73 L. Ed.
28 960; *Krauss Bros. Co. v. Mellon*, 1928, 48 S. Ct. 358, 276 U.S.
29 386, 72 L.Ed. 620 and *Buzyuski v. Luckenbach S. S. Co.*, 1928,
30 48 S. Ct. 440, 277 U.S. 226, 72 L.Ed. 860..

31 Because Judge Engelmayr did not conform to Supreme Court
32 decisions the first time around, there is now an expectation
33 that they will continue to ignore their obligation under the
34 Full Faith.

35 I present to Your Honor a motion to modify the terms and
36 conditions, as I need to have paper/motions/briefs served upon
37 judges because I am suing judges and prosecutors WHERE I do not
38 seek money but for them to do an act.

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48 MOTION FOR TO MODIFY PROBATION TERMS FOR PROCESS SERVICE OF JUDGES AND
49 PROSECUTORS - 6

1 I have discussed the issue with Mr. Silverman and Mr.
2 Greene. I even told Mr. Silverman to bring it up on Dec. 1st.,
3 where he did not.

4 I am being blocked to gain remedies that Your Honor with
5 Mr. Silverman's help and the AUSA's help, too

7 The topic is I did not receive a fair trial and I want one
8 and to show the world how Your Honor with other deprived me of
9 one

10 I make this application pursuant to Rule 32.1 Revoking or
11 Modifying Probation or Supervised Release

13 1. I suggested that the US Marshalls service the judges
14 2. Under the terms of the probation: The defendant shall
15 not make any phone calls or send any written
16 correspondence (including e-mail) to any prosecutor or
17 government personnel and shall not have any third
18 party do so on his behalf (with the exception of
counsel).

- 19 a. Mr. Silverman lied to Your Honor
20 b. This issue deals with my job
21 c. I have Mr. Silverman audio recorded saying that
22 he and AUSA Karamigous agreed to him sending
23 papers to the prosecutors
24 d. I need to sue him because he is depriving me
access to the court
25 e. The clause states: "with the exception of counsel"
26 f. I request to play the audio recording to establish the criminal conduct

- 1 3. Therefore, I need the US Marshalls to service my
2 lawsuit upon the DOJ, like AUSA Karamigous lied to
3 Your Honor and does not want to answer whether she has
4 a waiver or not
5 4. According to Mr. Silverman, the AUSA will gain
6 knowledge via pacer and there is no need to service
the DOJ

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10 Lucio Celli

11 Jan 22, 2021

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15 22nd Jan
16 Dated this 11th of October, 2021.

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23 Lucio Celli, Defendant